



3. A co-conspirator's statement is admissible under Fed. R. Evid. 801(d)(2)(E) to show a defendant's participation in the conspiracy. To be admissible, the Government must demonstrate (1) that a conspiracy existed; (2) that the defendant and the declarant were members of the conspiracy; and (3) that the declaration was made during the course and in furtherance of the conspiracy. Fed. R. Evid. 801(d)(2)(E). The admissibility of an alleged co-conspirator's statement is a preliminary question for the judge, not the jury, to decide. Fed. R. Evid. 104, *United States v. Bell*, 573 F.2d 1040, 1044 (8<sup>th</sup> Cir.1978). This requires the government to prove three essential elements by a preponderance of the evidence before a co-conspirator's statement is admitted; (1) the existence of a conspiracy; (2) the declarant and the "non-offering" party [Defendant] are involved in the conspiracy; and (3) the statements are made during the course of and in furtherance of the conspiracy. *Bourjaily v. United States*, 483 U.S. 171, 175(1987);
4. Although a pretrial evidentiary hearing is not mandated, such hearing is requested in the instant case because of the number of statements involved. See *United States v. James*, 590 F2d 575 (5<sup>th</sup> Cir. 1979), (suggesting that a pretrial termination is appropriate). Without a pretrial hearing on the admission of the statements, a tremendous amount of court time will be used which will disrupt an orderly presentation of the trial;
5. One of the factors the Eighth Circuit looks to in determining the reliability of a co-conspirator's statement for purposes of Fed. R. Evid. 801(d)(2)(E) is the

content of the statement, and whether it was corroborated by independent evidence. *United States v. Manfre*, 368 F3d 832 (8<sup>th</sup> Circ. 2004);

6. Statements or admissions made by a co-conspirator after apprehension, to law enforcement officials, are not “in furtherance” of the conspiracy. A co-conspirator’s post arrest, custodial statements are not intended to further a successful conspiracy and thus are not admissible as a co-conspirator’s statements under Fed. R. Evid. 801(d)(2)(E). *United States v. Rashid*, 383 F3d 769, 775 (8<sup>th</sup> Cir. 2004);
7. A statement that simply informs the listener of the declarant’s criminal activities is not made in furtherance of the conspiracy. While merely informative statements and statements made simply to impress the listener are not generally in furtherance of the conspiracy, statements that discuss the supply source for the illegal drugs or identify a co-conspirator’s role in the conspiracy are considered statements made “in furtherance” of the conspiracy. *United States v. Ragland*, 555 F3d 706, 715 (8<sup>th</sup> Cir. 2009).
8. This request is not made for undo delay or vexatious reasons;
9. The Interest’s of Justice will be served by granting this continuance.

WHEREFORE, Defendant prays this Honorable Court issue its Order granting Defendant’s Motion to Exclude Co-Conspirator’s Statements or, in the alternative, to schedule a pretrial hearing on the Motion.

Respectfully Submitted,

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I hereby certify that on August 11, 2014, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the Assistant United States Attorney.

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